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EXAMINER

SMITH, FANGEMONIQUE A

ART UNIT

PAPER NUMBER

3736

DATE MAILED: 08/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.



## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election of Group II, claims 41-54, in the reply filed on July 27, 2006 has been acknowledged. Claims 21-29, 32-36 and 55-59 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to non-elected Species. Claims 30, 31 and 37-40 are cancelled. Claims 41-54 are pending examination.

### ***Information Disclosure Statement***

2. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 41-48, 50 and 51 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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5. At line 4 of claim 41, the limitation “a succession of signal recordings in said recording track” is recited. This limitation refers to a single recording track. However, prior to this recitation, claim 41 indicates the possibility of having multiple audio recording tracks. It is unclear upon having more than one audio recording track, whether each recording track is to have a succession of signal recordings or if the claim is limiting only one recording track to have a succession of signal recordings, rendering the claim indefinite. Any claim depending from claim 41 is also rejected.

6. At line 1 of claims 43 and 44, the claims recite the limitation “each phase is recorded”. It is unclear whether the phase is recorded or if the signals are recorded at a phase, rendering the claim indefinite. Any claims depending from claims 43 or 44 are also rejected.

7. At lines 1 and 2 of claim 44, the limitation “recorded for the same length” is recited. It is unclear whether each phase is recorded for the same length of time or if each phase is recorded for the same length of time as the recording track, rendering the claim indefinite. Any claim depending from claim 44 is also rejected.

8. The term "about" in claim 45 is a relative term, which renders the claim indefinite. The term "about" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. As a result, claim 45 is rejected.

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9. Claim 47 recites the limitation "the tinnitus sufferer" in lines 2 and 4. There is no prior mention of a tinnitus sufferer in claim 47. Therefore, there is insufficient antecedent basis for this limitation in the claim. Any claim depending from claim 47 is also rejected.

10. Claim 47 recites the limitation "the same frequency" in line 5. It is unclear if this limitation is referring to the succession of additional sounds having the same frequency as the previously disclosed selected frequency or if the limitation means each of the succession of additional sounds have the same frequency, which may or may not be the same as the selected frequency, rendering the claim indefinite. Therefore, claim 47 is rejected. Upon rejection of 47, any claim depending from claim 47 is also rejected.

11. At line 6 of claim 47, the limitation "the prior sound in the succession" is recited. It is unclear what constitutes a prior sound in the succession for the first additional sound applied, rendering the claim indefinite. Any claim depending from claim 47 is also rejected.

12. Claim 50 recites the limitation "the tinnitus sufferer" in line 3. There is no prior mention of a tinnitus sufferer in claim 50 or in any claim from which claim 50 depends. Therefore, there is insufficient antecedent basis for this limitation in the claim.

13. The term "about" in claim 51 is a relative term, which renders the claim indefinite. The term "about" is not defined by the claim, the specification does not provide a standard for ascertaining

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the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. As a result, claim 51 is rejected.

***Claim Rejections - 35 USC § 102***

14. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

15. Claims 41- 48 are rejected under 35 U.S.C. 102(b) as being anticipated by Clark et al. (U.S. Patent Number 5,928,160).

In regard to claims 41- 48, Clark et al. disclose a home hearing test comprising a portable record member (14) with at least one audio track recorded on the record member (col. 6, lines 42-67).

The audio track comprises a succession of signal recordings, recorded at a predetermined frequency and amplitude (col. 11, lines 12-67; col. 12). The signal is recorded for a predetermined length of the audio track. The Clark et al. apparatus comprises a calibration tone as a first means for applying a first sound and a series of predetermined tones as a second means for applying a succession of additional sounds (col. 6, lines 10-67). As shown in Figures 9A and 9B, at least 30 signals are recorded at the predetermined frequency and are applied incrementally at the selected frequency.

16. Claims 49-54 are rejected under 35 U.S.C. 102(b) as being anticipated by Fletcher et al. (U.S. Patent Number 4,049,930).

In regard to claims 49-54, Fletcher et al. disclose a detection system for detecting malfunctions in electrical signal processing circuits in the form of frequency malfunctions. The device comprises an amplifier, which is a sound generator source (12) for the Fletcher et al. apparatus. The device further includes a phase shift network (48) as shown in figures 1 and 2 below.

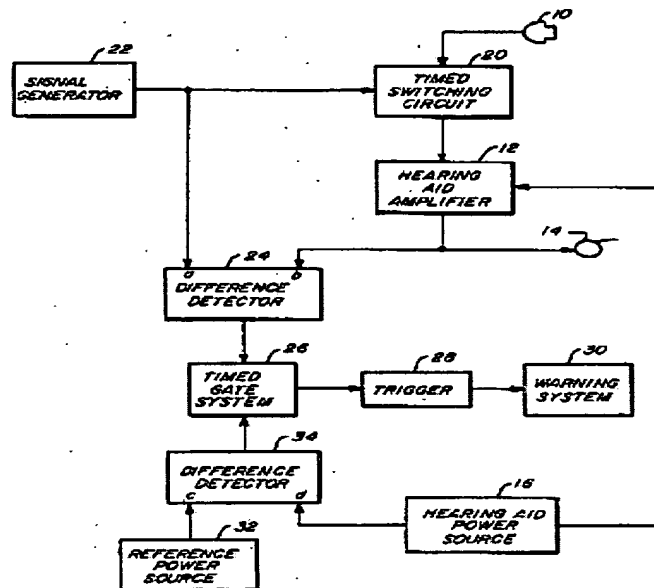
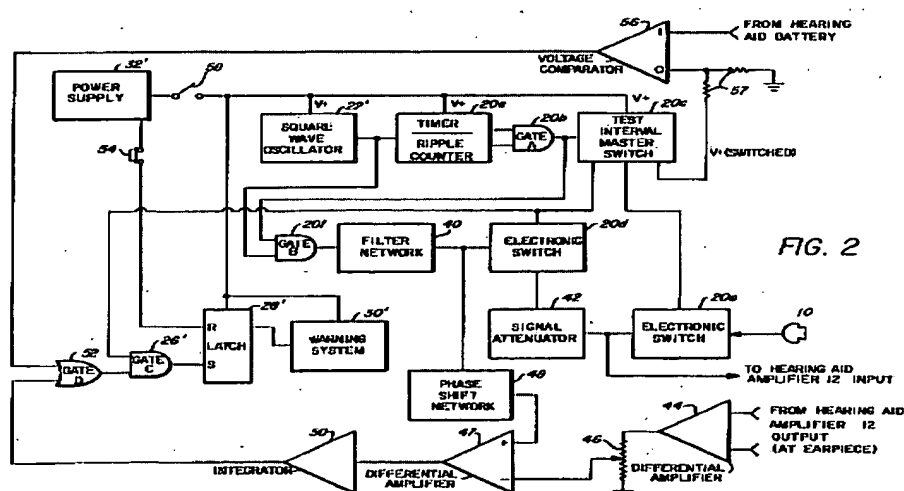


FIG. 1



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The sound signals generated are sent as output from the amplifier (12) to a speaker or earpiece transducer (14) (col. 4, lines 18-68). The circuit disclosed by Fletcher et al. with the phase shift network included is capable of shifting the phase in equal increments at least thirty times. The device is also capable of changing the phase about every ten minutes.


### *Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fangemonique Smith whose telephone number is 571-272-8160. The examiner can normally be reached on Mon - Fri 8am - 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on 571-272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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